

**Excerpt from the  
CITY PLANNING COMMISSION MINUTES  
Minneapolis Community Planning & Economic Development (CPED)  
Planning Division**

250 South Fourth Street, Room 300  
Minneapolis, MN 55415-1385  
(612) 673-2597 Phone  
(612) 673-2526 Fax  
(612) 673-2157 TDD

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**MEMORANDUM**

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DATE: June 7, 2012

TO: Steve Poor, Planning Supervisor – Zoning Administrator, Community Planning & Economic Development - Planning Division

FROM: Hilary Dvorak, Interim Planning Manager, Community Planning & Economic Development - Planning Division, Development Services

CC: Jason Wittenberg, Interim Planning Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of May 7, 2012

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The following actions were taken by the Planning Commission on May 7, 2012. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued.

Commissioners Present: Cohen, Huynh, Kronzer, Luepke-Pier, Mammen, Schiff, Tucker and Wielinski – 8

Not present: President Motzenbecker (excused)

Committee Clerk: Lisa Baldwin (612) 673-3710

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**4. Mulroy's Body Shop (BZZ-5483, Ward: 8), 3900 and 3920 Nicollet Ave ([Tom Leighton](#)).**

**A. Rezoning:** Application by R401K LLC for a rezoning of 3900 and 3920 Nicollet Ave from R2B to C2 in order to rehabilitate the office portion of the existing building at 3920 Nicollet Ave to improve the offices of the auto body business, and to house several commercial businesses that would be accessed through a separate entrance off Nicollet Ave, which would meet the Zoning Code definition of a "shopping center."

**Action:** Notwithstanding staff recommendation, the City Planning Commission recommended that the City Council **approve** the rezoning from the R2B, Two-family Residential District to the C2, Neighborhood Corridor Commercial District for the properties located at 3900 and 3920 Nicollet Ave S, based on the following findings:

1. Nicollet is a neighborhood corridor commercial district.
2. C2 zoning is consistent with policies for encouraging small scale business development that is compatible with residential uses.
3. It will encourage the City's economic development goals for retaining and attracting business investment.

**B. Conditional Use Permit:** Application by R401K LLC for a conditional use permit to establish a shopping center in the C2 zoning district for properties located at 3900 and 3920 Nicollet Ave.

**Action:** Notwithstanding staff recommendation, the City Planning Commission recommended that the City Council **approve** the conditional use permit for a shopping center in the C2 zoning district for the properties located at 3900 and 3920 Nicollet Ave S, based on the following findings:

1. A shopping center is allowed in the C2 zoning district.
2. The proposed shopping center would have small scale commercial uses that may well provide useful services to the community with minimal impact.

And subject to the following conditions:

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.
2. The applicant must comply with the specific development standards for Shopping Centers as set forth in chapter 546 of the Minneapolis Zoning Code.
3. Except for emergency use, customers shall enter and leave the shopping center only through the main entrance on Nicollet Ave.

**C. Variance:** Application by R401K LLC for a variance of the allowed sign location to permit up to 60 square feet of the total signage area to be located on the north wall of the building (enumerated variance #21) for properties located at 3900 and 3920 Nicollet Ave.

**Action:** The City Planning Commission adopted the findings and **denied** the application for a variance to allow up to 60 square feet of the total signage area to be located on the north wall of the building for the properties located at 3900 and 3920 Nicollet Ave S.

Staff Leighton presented the staff report.

**Commissioner Schiff:** When did the property become downzoned to R2B?

**Staff Leighton:** Good question. I don't think I know that; I can look it up.

**Commissioner Cohen:** There has been, through the years, a strong interest in reopening Nicollet at 28<sup>th</sup> and redeveloping all the way through. Can you tell us how your proposal to deny the application would be affected in any way if Nicollet were to be reopened?

**Staff Leighton:** We would certainly see more vitality along Nicollet throughout. We'd see more traffic, more business interest. I would think that we'd still be looking for a pattern of development that would direct growth to certain areas for the reasons that I talked about that

we're trying to build places that have value for communities and not just support businesses where someone thinks they can make a go of it.

**Staff Cohen:** Am I hearing you say that it probably wouldn't change staff's opinion on the zoning?

**Staff Leighton:** That'd be my assessment at this point in time, yes.

**Commissioner Kronzer:** Can you explain how or if this could become a change of nonconforming use to allow these retail and office tenants in this space?

**Staff Leighton:** Could you ask me that again, I didn't understand the question?

**Commissioner Kronzer:** Could a change of nonconforming use be used to allow these tenants?

**Staff Leighton:** It could. It's less desirable for the applicant. They could apply for it and they'd need to make a case that there's equal or less impact on the neighborhood by adding businesses, which may be a hard case to make, but the other practical inconvenience to applying for this as a nonconforming use is that if you change tenants, if you also end up changing out of different categories in the zoning code, you'd maybe need to come back and apply for a change of nonconforming use again and again.

**Commissioner Luepke-Pier:** I'm wondering if staff has had a chance to look at whether a different zoning would have been more appropriate, like OR2? Did you do any analysis to whether or not what your recommendation would be if that was the zoning?

**Staff Leighton:** We did discuss this among our staff a number of times and we also pushed pretty hard on some other creative zoning approaches to this and weren't able to find them. It is kind of a dramatic contrast between OR2 and C2, but there is a sense that staff could, if things don't change in the proposal, staff would likely be able to support the OR2 zoning change.

**Commissioner Luepke-Pier:** If this weren't to succeed as a C2 zoning, would they have to go back and reapply for OR2?

**Staff Leighton:** They would. We did invite them to make those applications at the same time, but understandably, they felt like they could make a better case just applying for what they were most interested in when they made the application.

**Staff Wittenberg:** In response to Commissioner Schiff's question about the date of downzoning, it looks like that was downzoned from a commercial district to R2B in 1988 as part of a 40 acre study.

Commissioner Tucker opened the public hearing.

**Thomas Wasmoen [not on sign-in sheet]:** I'm with Firm Ground Architects and Engineers. I've been working with the Mulroy's for almost a year now in putting together this application. I wanted to briefly restate our cause if I could. The biggest issue for us is a lack of clarity with the city. We had been told several different things on several different occasions in terms of what the building what the building was already approved for or not approved for. We thought we already had a CUP allowing the shopping center at one point and then when Tom dug into it he found that

that had never been approved it had been more of a verbal. So there was some back and forth with the city and we just decided we needed to get simple clarity on this site. We want the C2 because it allows you to approve the shopping center CUP and the signage variance and it enables the Mulroy's to do an even better job than they already do, and they already do a tremendous job in terms of the support and give and take they have with their community there. Some of the things that further support our request is that this site has always been used for commercial. It was aspirationally rezoned back in 1988, but the site has never been anything less than it is. If you look at the aerial view of the block, the block on Mulroy's side is completely commercial and the last residential pieces actually belong to the Mulroy's. They purchased them and redeveloped them and went through a process with the neighborhood to decide what the best fit and use would be there. I think one of the things we want to be clear about is that from a development standpoint, the Mulroy's have a very long standing history of having a business on Nicollet and having moved that business on three occasions, plus the property that the daycare sits on, they have been very good at pro neighborhood development. They have not down sold or taken an easy way out with any of the properties they've had. They have done a really good job of taking care of each one of these properties as they've moved to backfill it with a business that would support the community. There are issues with C2 creating an opening for certain kinds of businesses and Don and Pat have been very conscious of creating opportunities for the right kinds of businesses in their community. They had community meetings with regards to the daycare and that's how they decided to select that person to sell those properties to. I believe there was even an opportunity for them to sell those properties to the City of Minneapolis for 12 units of affordable housing and they turned that down in order to do something they felt met the community's needs more completely. We've had many conversations with staff and we've had some rollover with staff in who was working on this with us, but one of things that staff did say to us in the past, I think we met with Steve Poor and Shanna, and we had a conversation about the property whether we'd come in as an OR2 or C2 and one of the big issues for us is that with the C2 Pat can lease the small retail or business components at will, but if he changes from a yoga to a yogurt store he has to come in and go through the whole approval process. From the City's point of view, the way it was said to us was that if it's C2 then they don't have to spend time and we don't have to waste time. It's only in the fact that they have to be somewhat consistent with the decisions they've made before that they couldn't come right out and support the C2 as I understand that. The big piece of this is the trust and track record. Pat and Donna have done development on property, they have supported green initiatives in the Kingsfield neighborhood, they have one of the largest solar arrays on the roof of their building and on sunny days are selling energy back to the grid. Part of the plan with the remodel is to do geothermal on the parking lot so they can add even more green initiative to their site. That tells me that they are not planning on moving anytime soon. You don't make those kinds of investments on a property you're going to release back to the real estate world anytime soon. The other thing that you see is there is great support and you got a letter or two mailed to you of the neighbors and customers of Mulroy's and I believe there's even a letter from 2004 written by the president of this board, David Motzenbecker, that supports the C2 zoning for this site. The one last thing I want to mention is that the neighborhood didn't give us a letter supporting or not supporting us, but one of the things they were really looking for was something that really doesn't really have anything to do with going to a C2 or not, but they were wanting to get the deliveries that come to Mulroy's off of Van Nest. I was there this morning and took a photograph. What there was back there was two panel trucks. One was parked illegally up on the sidewalk and the other was in the middle of the street. Part of the process of redoing his property is to add a delivery door in the parking lot on the north face of the building which will essentially eliminate 80% or better of deliveries that block Van Nest on a weekly basis. This is Pat's attempt to be a good neighbor and to solve problems and to work with the people that are in his community and find a way to keep things

moving forward. The last thing I'll mention is that he is taking part in green initiatives within the city's green print plan, I think that's what it's called. They've done training for energy efficient and/or green training for auto repair. They use water based paints and it's really an incredible operation and something you should visit if you haven't seen it. Thank you.

**Commissioner Luepke-Pier:** So the main reason they're going for C2 instead of OR2 is because they want to have the flexibility to change uses down the road; maybe a car wash, gas station or liquor store?

**Thomas Wasmoen:** First of all, C2 allows a liquor store but there's a church across the street so the city would not allow a liquor store in this location. The gas station idea, it's so far away from the main roads that come off the highway that it wouldn't be attractive for that sort of thing. They're not looking to move their business. What they want the C2 for is the ability to use that small area for the shopping center in a more flexible way. They want to be able to offer it to a Boy Scout troop for a Christmas tree lot or potentially an alternate location for a farmer's market. They also want to be able to loan some parking when they can to their neighbors when they need it. Those are all things that are not allowed given their current situation.

**Commissioner Luepke-Pier:** Can I ask staff to follow up on that because I was under the impression that that was not the case.

**Staff Dvorak:** The comment about going from yogurt to yoga or yoga to yogurt, retail sales and service uses are permitted uses in the OR2 zoning district so those two uses specifically could switch in and out and there's a handful of uses that are permitted. It's a more restrictive list of commercial uses that are allowed in the OR2, it's not the full gamut of uses allowed in the C2, but they are permitted and they can switch in and out as long as it's one of the dozen or so uses. As far as the farmer's market, that would be allowed on this site as a temporary use up to about 75 days a year. The lot could be used for that type of use.

**Commissioner Kronzer:** In the staff report it says it can be a retail use or multiple office uses. That leads me to believe that it's one retail use and not retail and office combined. Can I get a clarification on that?

**Staff Dvorak:** In the OR2 zoning district, offices are a permitted use. For the retail, it's the neighborhood serving retail uses that are allowed. There are a dozen or so uses and you can have two 2000 square foot neighborhood serving retail uses in an OR2 district in addition to office.

**Staff Leighton:** It becomes a little nuanced because a shopping center is not allowed in the OR2 district so the shopping center is what allows you to do multiple uses through a single door. There's still a list of retail uses that are allowed in the OR2 district but that's why the staff report says you can have a single retail use through that door or you could have multiple office uses because office encompasses either a single office or multiple offices through a single door. You can't have a shopping center in an OR2 district.

**Commissioner Kronzer:** There's no way to vary a shopping center into an OR2 district?

**Staff Leighton:** No, I don't think so.

**Thomas Wasmoen:** The property that's two blocks to the north that was developed by Plymouth Church Neighborhood Foundation has been before this board with a request for a variance

because they were in an OR2 district and couldn't seat enough people in a restaurant given their particular layout so that's one of the reasons why we're looking for the flexibility, so we don't have to come back every time we have a change. The way that the property is laid out, we would create a second entrance into the building that would serve those shops and offices that would be leases as part of the shopping center. The one thing I want to point out, as part of our application we let you know that before we knew we did not comply, that the Mulroy's have already had this mix up and running and it worked effectively, it was good for the neighborhood, it created safety on the street and there was no negative to the functionality of it other than the fact they had to run through the body shop's office to get in and out. Creating the separate entry will help keep Mulroy's business independent of those spaces and let those people come and go a little more independently.

**Larry Heller (3920 Van Nest Ave):** I'm directly behind Mulroy's. Van Nest, as was described earlier, is only 23 feet wide and can be an inconvenience for our neighborhood which is why a lot of us are very much in support of having a secondary location for deliveries so we don't have to worry about backing into vehicles or having to wait for someone to get out of the way to go into our driveways. I was on vacation last week so I was able to see the traffic I don't normally see while I'm at work. It does come about a few times throughout the day. We'd really like to see this moved off the street. As for the past, we've had some good tenants in there. The Mulroy's have been good tenants, they're always asking for the neighbor's input of what goes on around the neighborhood and if you have any complaints. When they first moved in, Super Shell was originally there. Their drivers would drive down the wrong way on Van Nest, lay on the horn after 10pm to try to get in to the building and had an office manager changing his girlfriend's oil over the street drain. We don't want to see anything like that in our neighborhood. Mulroy's has been a great neighbor to have. Thank you.

**Kelly Mangin (3916 Van Nest Ave) [not on sign-in sheet]:** We live in Linden Hills and were recently involved in the Linden Hills corner development with the large appeal. We support local businesses and we agree with everything they're doing, but our question is, is the zoning and the height of the building from C1 to C2 and having the potential to move to a five story building if that were to be from a 2.5 in C1 to a five story building in C2. That's our concern.

**Staff Dvorak:** The height allowance in the C2 district is four stories/56 feet and that's as of right.

**Commissioner Tucker:** It would increase the height, potentially.

**Kelly Mangin:** Can everything get done at a lower zoning?

**Commissioner Tucker:** I think the answer is that potentially it could get higher as of right if it is rezoned to C2. The plan in front of us doesn't say that, but as staff mentioned earlier, rezoning is forever so once it gets that zoning some future owner could develop it differently within those standards.

**Mary Beth Heller (3920 Van Nest Ave):** We support Mulroy's, we support the rezoning of the entire area. We haven't been disappointed with anything that's been in there so far. Thank you.

Commissioner Tucker closed the public hearing.

**Commissioner Schiff:** I'm going to move approval of the rezoning (Huynh seconded). There's nothing worse we could do to discourage the business environment and encourage vacant commercial buildings in Minneapolis than to downzone and give nonconforming status to existing buildings that have been operating for a long time and that's what happened in 1988. I can't see the public interest in chasing this business out of the city of Minneapolis and building some duplexes. The R2B zoning in lieu of a property tax paying business that employs people makes no sense to me whatsoever. I actually remember the discussion back in 1988 that led to the downzoning of so many commercial properties throughout the city. The City Council had started a study about the large number of vacant commercial buildings and the sad conclusion that they came to was that there was just too many of them. They concluded that the middle class was leaving the city, they didn't conclude that we need to do more to grow jobs, they concluded that there was just too many commercial buildings and the best way was to downzone them to encourage them to go away completely. That is an anti-business strategy if I've ever heard one. All this has succeeded to do is to cause problems for a business that is supported by the neighborhood, that has been a good citizen. An auto body shop with solar panels? Are you kidding me? I have never seen a more green business and now thermal underground being requested. It matters a lot for businesses, particularly when getting refinancing, to have conforming zoning. It matters a lot to them when leasing space when space becomes available. We should give them the flexibility. Most of the business activity, or all of it, happens indoors in an enclosed business. There's already a car wash and a gas station down the block so I'm not worried about another car wash or gas station being located on this site. This is the best thing we can do to encourage this business to continue to invest.

**Commissioner Luepke-Pier:** I have a question for Commissioner Schiff as to what his opinion is regarding OR2 versus C2 because that's the one thing I find myself struggling with, the need to go up to C2 when it could easily be accomplished under OR2.

**Commissioner Schiff:** I think we see C2 as consistent on Nicollet if you just look north of Nicollet Ave you see other C2 zoning. C2 has always been regarded as being perfectly consistent with commercial and community corridors so that's what the applicant chose and it makes them conforming and meets their need and gives them more flexibility into the future.

**Commissioner Cohen:** This is a tough one because it's clear that the current owners and operators of this facility have done a good job and have neighborhood support and will continue to do a good job, but as is frequently mentioned at these moments, zoning is forever and while we can't look into the future, some of the uses that are available under the C2 are not in my opinion desirable for this area and could be implemented. I would much prefer to have the lesser zoning, the OR2 and await development, await events, rather than take what I think is a much more radical approach to this so I am voting against this.

**Commissioner Huynh:** I live near five auto oriented uses in my neighborhood and as much as I don't like to see them expand, the businesses that have been there for a long time have been a great benefit to the neighborhood so I think that just because you've been a staple in your neighborhood and have been good to your neighbors, it seems like the obvious choice is to be able to support your application.

**Aye:** Kronzer, Mammen, Wielinski, Huynh, Schiff and Luepke-Pier.

**Nay:** Cohen

**Commissioner Schiff:** I will move approval of the conditional use permit (Mammen seconded).

**Commissioner Tucker:** I believe staff has some suggested conditions; are you aware of those?

**Commissioner Schiff:** I was just going to ask about those, especially the change in delivery if that would be appropriate to add so that deliveries are not made off of the street to the west?

**Staff Leighton:** I've prepared them for you. The first two suggested conditions are boilerplate conditions that are part of all of our conditional use permit application recommendations. The third one is simply that customers of the shopping center make use of the front entrance and don't come and go via the rear entrance on Van Nest.

**Commissioner Schiff:** I will move that with those conditions (Wielinski seconded).

**Aye:** Kronzer, Mammen, Wielinski, Huynh, Schiff and Luepke-Pier.

**Nay:** Cohen

**Commissioner Schiff:** Item C, I am not as crazy about this application because I'm worried about the precedence for other businesses nearby. They would all get the same right to have the same signage on a wall that does not include a primary entrance and there is just no way we could deny the neighbors the same zoning signage so I don't have a motion to approve it.

Commissioner Cohen moved staff recommendation (Wielinski seconded).

**Aye:** Cohen, Kronzer, Wielinski, Huynh, Schiff and Luepke-Pier.

**Nay:** Mammen

**Commissioner Tucker:** That completes the applications, now we need findings. Commissioner Schiff, can you repeat the zoning findings that you came up with?

**Commissioner Schiff:** Nicollet is a neighborhood corridor commercial district, C2 zoning is consistent with our policies for encouraging small scale business development that's compatible with residential uses and it will encourage the City's economic development goals for retaining and attracting business investment.

**Staff Leighton:** I think you'll find a lot of material in the staff report that you can use to support the conditional use permit application because the primary concern on that one was that we wouldn't want you to approve that if you were going to deny the rezoning... or you wouldn't be able to approve that.

**Commissioner Tucker:** So with the rezoning, the shopping center is a more reasonable proposition.

**Commissioner Schiff:** The shopping center is allowed in the C2 district and the staff report says "the proposed shopping center would have small scale commercial uses that may well provide useful services to the community with minimal impacts."